

1984 WL 249879 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 3, 1984

\*1 Charles D. Barnett, Ph. D.  
Commissioner  
South Carolina Department of Mental Retardation  
P. O. Box 4706  
Columbia, SC 29240

Dear Commissioner Barnett:

You have requested the opinion of this Office concerning the interpretation of [Section 6-7-830, Code of Laws of South Carolina \(1976\)](#), as amended, and whether the notice required for locating a home for mentally or physically handicapped persons, pursuant to this Section, is properly sent to the local governing authority or the chief zoning administrator of said governing body.

[Section 6-7-740, Code of Laws of South Carolina \(1976\)](#), as amended, grants to the Governing authority of a municipality or county the authority to create a zoning board of adjustments or a board of zoning appeals and specifically sets forth the powers of such boards. The powers which a particular board of adjustment may validly exercise are prescribed by this statute. [Holler v. Ellisor, 259 S.C. 283, 191 S.E.2d 509 \(1972\)](#). The 1962 version of this statute, which was in effect at the time of the [Holler](#) decision, Section 14-350.19, has basically been retained as [Section 6-7-740](#). However, since this decision was rendered finding invalid a provision of an ordinance authorizing a board of adjustment to hear and decide and grant special exceptions to the ordinances as exceeding the powers authorized under this Section, the Section has been amended. This amendment, effective July 16, 1981, provides that the governing authority may by ordinance designate itself or another body as a proper body to hear and decide special exceptions, [Section 6-7-740\(3\), Code of Laws of South Carolina \(1976\)](#), as amended. [Section 6-7-830](#) excepts homes for mentally and physically handicapped persons serving nine (9) or less persons with twenty-four hour care and sets forth the procedure to be followed in locating sites. This procedure does not require a decision for this exception, but is an express grant of an exception.

[Section 6-7-710, Code of Laws of South Carolina \(1976\)](#), in introducing the local planning and zoning article of Title 6, grants to the governing authorities of municipalities and counties the power to regulate zoning. While the planning commission, pursuant to [Section 6-7-720](#), makes recommendations to the municipality or county governing body, the governing authority of the county or municipality is to exercise the powers granted in this chapter.

In addition, the title to the Act amending Act 449 of 1978, and codified as [Section 6-7-830](#), provides that notice be given to the governing body of the jurisdiction in which a home for mentally or physically handicapped persons is to be located. Based on the rules of statutory construction, the title of an Act can provide useful guidance in interpreting the body of an Act, 1A [Sutherland Statutory Construction](#) § 18.09.

In addition, [Section 6-7-830](#) further provides that the local governing body, if it objects to the site selection, is to notify the agency seeking to establish the home within fifteen (15) days of receiving the notice and the references throughout the Section are to the local governing body, and its responsibilities in the location of suitable sites for these homes. The zoning board of adjustments cannot be properly characterized as a local governing body as its powers are specifically provided for and limited by statute.

\*2 While this Section is open to interpretation, it is our advice that the notice should be sent to the local governing body of the county or municipality as opposed to the planning commission or zoning board of adjustments. However, as a practical matter, it would be advisable that a copy be sent to the zoning administrative official, as the Courts have not ruled on the issue. Legislative clarification in this matter might be advisable.

[Section 6-7-830](#) provides the information to be included in the notice. Specifically provided for in the statute is that the notice must identify the exact site of any proposed home, the individual representing the agency for site selection purposes and by implication, the number of persons to be served by this home, the care to be provided and the approval or licensure by a State agency or department to provide such care should be included.

Very truly yours,

Ruby E. Brice  
Assistant Attorney General

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